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PRESENTATION BY THE UK GOVERNMENT TO FAA HEARING ON 24 FEBRUARY 1999

Good Morning. My name is David Lord. I am the UK's Director of Transport Security, responsible to the Deputy Prime Minister for the regulations governing aviation security at UK airports.

2. I am grateful for this opportunity to address the Panel. The UK will be submitting a written response, setting out our objections to this legislation in detail. However my Government regarded it as essential to leave you in no doubt at all as to the UK's strong opposition to what is proposed, and for me therefore to appear personally before you to urge the Administrator to revert to Congress to explain why the new law is fundamentally flawed and ultimately unworkable.

Legal Issues

3. At the **outset** I **should point** out that this attempt to apply US law outside the territorial limits of **the United** States is objectionable to my Government. In **effect**, the US is seeking to dictate how we should run our **affairs** in Britain. Such an **infringement of** our **sovereignty cannot** be **simply** ignored. Moreover the provisions in the Act run **contrary** to the internationally agreed arrangements under the Chicago Convention, to which the US is a Contracting Party. The **UK** attaches importance to these issues of principle; and accordingly we shall be **making** representations **to** the US Government at the highest political level. I know **other** speakers today **will** be making similar points, so I intend now to focus on the issues raised by **implementation** - some of which would not necessarily have been **apparent** to Congress when the Act was passed.

Countering Terrorism

4. **The** UK is at one with the US Government in believing that international cooperation is absolutely **vital in** the fight against terrorism. Also, that major efforts must continue to be made to raise aviation security standards world-wide. It was after all the UK and the US who led the **world** in the aftermath of the Lockerbie tragedy in pressing **for** much needed improvements. But by seeking to impose its **particular** regime **on** other countries against their wishes, the US will **certainly** damage **cooperation**. As America's staunchest ally against the terrorist threat, the UK can only view with diiy this misguided attempt to force through implementation of the Act.

CHIEF COUNSEL RULES DOCKET

- 5. Nor is it going too far to say that the new legislation is a complete nonsense in security terms. The Act ignores the cardinal principle of Risk Management that is, matching the degree of security to the level of threat. The "identical measures" provision also removes all discretion as to how best to protect. If implemented, the Act would result in the introduction of unnecessary and inappropriate procedures: unnecessary because they would not be consonant with the level of threat, and inappropriate because they would not necessarily suit the airport environment outside the US. There would be a diversion of expensive resources and effort away from areas which are far more important. In short, pursuit of the Act as it stands would actually be prejudicial to aviation security, and would further delay the implementation of adequate standards throughout the world. Was that what Congress intended? I think not.
- 6. Rather, what the Act seems to be designed to do is to ensure a commercial level playing field between US Carriers and their foreign competitors so far as security costs are concerned, and in reality to have nothing to do with better security. Indeed, the NPRM states that the identical measures requirement will only be applied where foreign carriers are competing with US carriers on a given route to the us.

Practicalities

- 7. The Act also flies in the **face** of the sensible principle of Host State responsibility set out in **the** Chicago Convention. If all nations behaved in the same way as the **US** is **currently** behaving, the result would be complete chaos. For example, the UK could take the same approach, and insist on all carriers flying to the UK from the US applying measures set by me as the British regulator, Quite apart from the inevitable resentment this would cause, implementation of a UK-style regime would necessitate the expenditure of hundreds of millions of dollars at US airports on the type of sophisticated automated baggage reconciliation and screening facilities which we deploy at our airports.
- 8. As fellow professionals, I know FAA colleagues are well aware that appropriate protection can be achieved in a variety of ways; and that a choice needs to be made **according** to the operating environment. But the identical measures provision in the new Act allows for no variation, and pays no regard to the situation which exists at UK and other foreign airports, **At** London's Heathrow for example, some **80%** of the traffic is international and some 40% on transfer. The **facilities**, including the security arrangements, are designed accordingly. The UK has been quite prepared to grant the FM's long-standing

request, properly made under the arrangements in Annex 17 to the Chicago Convention, for special measures to be applied in the UK to US Carriers in order to counter the particular terrorist threat to them. But what may in the view of the FAA be feasible and justified for US airlines and for other carriers at special risk simply isn't possible or necessary for all.

Economic Consequences

- 9. Which brings me on to the economic consequences of implementation. Substantial additional costs would accrue as a result of implementing the provisions of the Act in the UK: these will be outlined in our written response to the NPRM. However I would point out that because of the way aviation security is financed in Britain, some of these costs would result in increased landing charges. US carriers complain already about the level of such fees: inthis way, the provisions in the Act would further increase the burden on all carriers, including us airlines.
- 10. I have **left** until last **a** major stumbling block for the UK, which would also have very **significant consequences** for the US carriers, if the proposed rule were to have **effect.** A **careful** analysis of the impact which implementing the Act would have our larger **airports** has shown that the measures which the FAA requires under its ACSSP **would result in the loss** of **a** large number of departure **slots and therefore** services **-** due to terminal space limitation and consequent **lengthening** of times **for aircraft** being on-stand. Such slot losses would have the most serious economic **consequences far** exceeding the costs of providing the staff and equipment which would be needed to extend the FAA's measures to foreign carriers.
- 11. Any reduction in **the** number of slots would **affect** all carriers: in this way, US airlines **would lose out along with the others. In** addition, there would have to he a spreading of **departures, which would** mean some flights could not leave at the most popular times. There **would** be a lengthening of minimum connecting times, and **further congestion caused** by the denial of off-airport check-in. My colleagues **from** BAA and **BA whose** presentations **follow** mine will explain the implications in more detail.

In Conclusion

12. If this was a genuine attempt to improve security, the UK would be the first to try to reach an **accommodation** with the US. My Government remains steadfastly committed to the highest **standards** achievable in practice, and for

continuous efforts to be made to upgrade aviation security as new techniques become available. As any knowledgeable individual in the business will tell you, standards in the UK are now among the best in the world.

- 13. But as I have outlined in this presentation, this isn't about improving security; indeed it will actually be counter-productive so far as preventing international terrorism is concerned. Moreover the economic consequences of implementation would be plainly so great that the UK Government cannot possibly accept them, even if it was prepared to forego its sovereign right to determine what security measures should be applied in Britain.
- 14. Unless action is taken by the US to change course, implementation of the Rule as proposed is bound to cause immense and wholly unnecessary damage to the aviation industries in the UK, the US and elsewhere, as well as being detrimental to the fight against terrorism. The matter lies in your hands.

15. Thank you for listening.

Further questions:

Tricia Hayes, British Embassy

(202) 588 6696

Public Meeting

On

Part 129: Security Programs of Foreign Air Carriers

FM Auditorium, Washington, D.C. February 24, 1999
Registration – 8:00 a.m.



Ito Tamio, All Nippon Airways

Kamal Nawash, Legal Director

American-Arab Anti-Discrimination Committee (ADC)

Wasa Nasser, citizen

American-Arab Anti-Discrimination Committee (ADC)

Dr. Mohammed Sekkarie, citizen

Dr. Faris Al Kawas, citizen

Additional Information

Restrooms and water fountains can be found at either end of the hallway. Telephones are located at the lobby level. Smoking is not permitted in the building. No food or drinks are permitted in the auditorium.

There is no admission fee to participate in this meeting. The session is open on a space available basis to each person that registers.

You may purchase a verbatim transcript of the meeting from Executive Court Reporters after March 17, 1999. Call Executive Court Reporters at 301-565-0064 or e-mail them at ecr@erols.com. The cost of the transcript is \$1.95 per page.

The docket on this proposed rule will remain open for written comments until March 23, 1999.

Since these proceedings are being conducted in a public forum, sensitive security information pertaining to air carrier and airport security programs cannot be discussed at this meeting. If you would like to make comments which include or reference sensitive security information, you should send your comments to: Federal Aviation Administration; Office Of Civil Aviation Security Operations; Attention: FAA Security Control Point Docket Number FAA-1998-4758; 800 Independence Avenue, SW; Washington, D.C. 20591.

All other comments on the proposed rule may be sumitted to: US Department of Transportation Dockets; Docket Number FAA-1998-4758; 400 Seventh Street, SW; Room Plaza 401; Washington, DC 20590. Comments may also be submitted via the internet at: 9-NPRM-CMTS@FAA.GOV.

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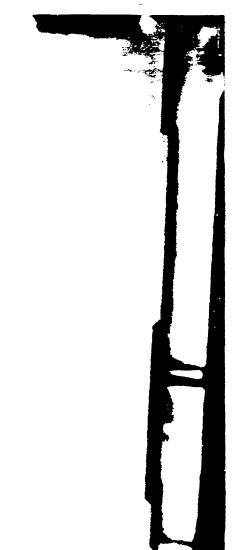
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